

Message Text

UNCLASSIFIED

PAGE 01 MANAGU 00579 101716Z

70

ACTION L-02

INFO OCT-01 ARA-10 ISO-00 SP-02 AID-05 EB-07 NSC-05

CIEP-02 TRSE-00 SS-15 STR-04 OMB-01 CEA-01 FRB-01

COME-00 CIAE-00 INR-07 NSAE-00 H-02 /065 W

----- 095638

R 101622Z FEB 75

FM AMEMBASSY MANAGUA

TO SECSTATE WASHDC 6219

UNCLAS MANAGUA 0579

E. O. 11652: N/A

TAGS: EINV, NU

SUBJECT: CALVO CLAUSE AND RELATED PROVISIONS

REF: STATE 024007

1. FOLLOWING IS THE OPINION OF A PROMINENT LOCAL CONSTITUTIONAL AND CORPORATION LAWYER WELL KNOWN TO THIS EMBASSY ON FOREIGN INVESTORS' RIGHTS TO HAVE HOME GOVERNMENT ASSISTANCE IN INVESTMENT DISPUTES:

QUOTE THE CALVO CLAUSE CUSTOMARILY INSERTED IN THE CONCESSIONS GRANTED BY CONTRACT OR BY LAW BY CERTAIN LATIN AMERICAN STATES, WHICH PROHIBITS FOREIGNERS TO RESORT TO THE DIPLOMATIC PROTECTION OF THEIR GOVERNMENTS OR STIPULATES THE INADMISSIBILITY OF ANY INTERNATIONAL CLAIM IN THE EVENT OF DAMAGES OR IMPAIRMENT CAUSED TO THE FOREIGNER IN HIS INTERESTS (INVESTMENTS, ANNULMENT OF CONCESSION, EXPROPRIATION OF ASSETS, ETC.), SUCH AS IT IS DETERMINED, DOES NOT EXIST IN NICARAGUA. IN NICARAGUA, THE POLITICAL CONSTITUTION OF APRIL 3, 1974, PUBLISHED IN THE GAZETTE, OFFICIAL DIARY OF THE NICARAGUAN GOVERNMENT, NO. 89 OF APRIL 24, 1974, CONTAINS THE FOLLOWING DISPOSITIONS:

A) ART. 27 FOREIGNERS CANNOT MAKE CLAIMS OR DEMAND ANY KIND OF INDEMNIFICATION FROM THE STATE, EXCEPT IN THE CASES AND IN THE MANNER WHICH NICARAGUANS CAN MAKE THEM.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 MANAGU 00579 101716Z

B) ART. 29 FOREIGNERS CANNOT RESORT TO THE DIPLOMATIC CHANNELS, EXCEPT IN CASES OF DENIAL OF JUSTICE.

A VERDICT UNFAVORABLE TO THE CLAIMANT SHOULD NOT BE UNDERSTOOD AS A DENIAL OF JUSTICE. THOSE WHO CONTRAVENE THIS DISPOSITION WILL LOSE THE RIGHT TO RESIDE IN THE COUNTRY.

AS A GENERAL RULE, IN ALL NICARAGUAN LEGISLATION RELATED TO NATURAL RESOURCES AND INVESTMENTS FOREIGNERS ARE IN COMPLETE EQUALITY OF CIRCUMSTANCES AS NICARAGUANS. IN THIS RESPECT, ART. 15 OF THE GENERAL LAW ON THE EXPLOITATION OF NATURAL RESOURCES, STATES: ANY PERSON, NATURAL OR JURIDICAL, NATIONAL OR FOREIGN, CIVILLY ABLE TO ACQUIRE RIGHTS AND TO CONTRACT OBLIGATIONS AND WHO HAS NO EXPRESS PROHIBITION OR SPECIAL INCAPACITY DECLARED BY LAW, MAY REQUEST AND ACQUIRE THE PERMITS, LICENSES AND CONCESSIONS, SUBJECT ONLY TO THE PRECEPTS OF THIS LAW AND TO THE SPECIAL LAWS COMPLEMENTING IT, PROVIDING THAT HE CAN PROVE TO POSSESS SUFFICIENT TECHNICAL AND FINANCIAL CAPACITY TO INITIATE AND CARRY TO COMPLETION THE CORRESPONDING WORK.

ART. 52 (5) OF THE SAME LAW DOES DEMAND THAT A FOREIGNER, IN HIS REQUEST FOR A CONCESSION, STATE CLEARLY AND CATEGORICALLY THAT HE, HIS REPRESENTATIVES OR SUCCESSORS, THEMSELVES SUBMIT TO THE JURISDICTION OF THE ADMINISTRATIVE AND JUDICIAL AUTHORITIES WHICH THE LAW INDICATES. THE FOREGOING IS FOR THE EFFECT OF EXHAUSTING THE LEGAL REMEDIES WHICH NICARAGUAN LAWS GRANT TO NICARAGUANS AND FOREIGNERS ALIKE WHEN THEY FEEL AGGRIEVED IN THEIR RIGHTS OR INTERESTS.

AS ALREADY EXPRESSED IN ART. 29 OF THE POLITICAL CONSTITUTION NOW IN FORCE, NICARAGUA DOES NOT ACCEPT THE CALVO CLAUSE, AND ON THE CONTRARY, ALLOWS FOREIGNERS TO RESORT TO DIPLOMATIC CHANNELS IN CASE OF DENIAL OF JUSTICE. IT IS UNDERTSOOD THAT DENIAL OF JUSTICE EXISTS WHEN THERE IS NO DUE PROCESS OF LAW; AND EVEN WHEN THERE IS DUE PROCESS OF LAW, DENIAL OF JUSTICE EXISTS WHEN THE SUBSTANTIVE LAW, IN ITS FINAL RESOLUTION, IS INTERPRETED OR APPLIED BY THE NICARAGUAN AUTHORITIES IN A MANNER CONTRARY TO ITS REAL MEANING. END QUOTE

2. THE FCN TREATY OF JANUARY 21, 1956, BETWEEN NICARAGUAN AND UNCLASSIFIED

UNCLASSIFIED

PAGE 03 MANAGU 00579 101716Z

THE U.S. REQUIRES NO LESS THAN NATIONAL TREATMENT AND MFN TREATMENT OF PROPERTY RIGHTS FOR NATIONALS AND COMPANIES OF EACH COUNTRY WITHIN THE OTHER COUNTRY (ARTICLE VI). ARTICLE XXIV PROVIDES FOR OPPORTUNITY FOR CONSULTATION REGARDING MATTERS UNDER THE TREATY AND SETTLEMENT OF DISPUTES NOT ADJUSTED BY DIPLOMACY BY THE ICJ UNLESS PARTIES AGREE TO SETTLEMENT BY OTHER PACIFIC MEANS. ARTICLE V(2) OF THE TREATY ADMITS THE POSSIBILITY OF ARBITRATIONBY THIRD PARTIES OUTSIDE EITHER COUNTRY IN CONTRACT

DISPUTES.
SHELTON

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INVESTMENT LAW, CONSTITUTIONAL LAW, TEXT, AMENDMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 10 FEB 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975MANAGU00579
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750048-0471
From: MANAGUA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750257/aaaabzmm.tel
Line Count: 117
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 75 STATE 024007
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 24 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24 APR 2003 by RuthemTJ>; APPROVED <15 JAN 2004 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CALVO CLAUSE AND RELATED PROVISIONS
TAGS: EINV, NU
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006